



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1997

Lt. C.E. Cox
Administrative Services
Bell County Sheriff's Office
P.O. Box 749
Belton, Texas 76513

OR97-0448

Dear Lieutenant Cox:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104192.

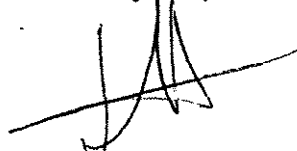
The Bell County Sheriff's Office (the "sheriff") received a request for a mug shot of a particular individual. You inform us that the Bell County Attorney has dropped the charges against the individual and "there is no chance for a conviction in this issue."

You contend that the mug shot is excepted from disclosure pursuant to section 552.108, which excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We conclude that section 552.108 excepts from disclosure the requested mug shot.¹ We note, however, that in this particular instance the sheriff also has the discretion to release this photograph. *See* Gov't Code § 552.007.

¹The requestor contends that the mug shot is public information, in accordance with Open Records Decision No. 616 (1993). The rationale this office utilized in Open Records Decision No. 616 (1993) has been overruled by the Texas Supreme Court in *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Consequently, this office no longer distinguishes between "active" and "closed" criminal investigations when making determinations under section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to be 'Janet Monteros', written over a horizontal line.

Janet Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/rho

Ref.: ID# 104192

Enclosure: Photograph

cc: Mr. Thomas C. Retzlaff
P.O. Box 1864
Temple, Texas 76503-1864
(w/o enclosure)